

# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


## **RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/19/2008

(Per: PJK)





### Appendix A

 The 2009 drafting file for LRB-0237

has been copied/added to the drafting file for

**2009 LRB-0314**

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2009 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2009 DRAFTING REQUEST****Bill**Received: **09/16/2008**Received By: **pkahler**Wanted: **As time permits**

Identical to LRB:

For: **Children and Families**By/Representing: **Bob Nikolay**This file may be shown to any legislator: **NO**Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - misc**

Extra Copies:

Submit via email: **YES**Requester's email: **Robert.Nikolay@wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**No specific pre topic given

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**Topic:**AFDC collections repayment to federal government

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**Instructions:**See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/16/2008	jdye 09/17/2008		_____			State
/P1			mduchek 09/17/2008	_____	lparisi 09/17/2008		

FE Sent For:

&lt;END&gt;

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**Bill**

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1?	pkahler	PI 9/17 jld	md 9/17	and ph 9/17			

FE Sent For:

<END>

## **Statutory Modifications**

### **Department of Children and Families 2009-11 Biennial Budget**

**DIN:** 5400

**Topic:** AFDC collections repayment to federal government

#### **Description of Change:**

Create a sum-sufficient GPR appropriation limited to the purpose of repaying the federal government for its share of disputed AFDC overpayments recovered by the state in FFY 01 and before. Reflect \$0 in each year in the appropriation schedule.

#### **Requested Change:**

Create a new appropriation under s.20.437 (2), such as s.20.437 (2) (c), defined along the following lines:

s.20.437 (2) (ca) *AFDC audit resolution*. A sum sufficient to pay any remaining liability to the federal government related to overpayments under the aid to families with dependent children program that were collected by the department of workforce development after the start of the temporary assistance for needy families program.

Create a session-law/non-statutory provision stating that the appropriation is repealed on June 30, 2011 (the end of the 2009-11 biennium). In addition, include a provision (either in the appropriation definition or the non-statutory provision, whichever the drafter considers more appropriate) stating that "remaining liability" under the new appropriation shall be "an amount determined by the secretary of the department of children and families." If something less general or more explanatory is preferred, an alternate definition could be, "shall be an amount that reflects the amount agreed to by the secretary of the department of children and families and the federal department of health and human services less any amount that has already been repaid by other means prior to the general effective date of the act."

#### **Justification:**

When the federal Temporary Assistance for Needy Families (TANF) program began in 1996, replacing the former Aid to Families with Dependent Children (AFDC) program, the U.S. Dept. of Health and Human Services, Administration for Children and Families (ACF) issued guidance to states that they should continue to recover overpayments made under the former AFDC program. Unfortunately, ACF issued conflicting guidance memos regarding what states should do with the collections. The second of these memos indicated that states could retain the federal share of the AFDC collections and use them in the TANF program.

Subsequently, in a program instruction on September 1, 2000, ACF rescinded that guidance and sought retroactive payment from states, demanding payment via check, "in state funds."

DHHS auditors determined Wisconsin owed a total of \$10,711,338 million for FFY 01 and before. The department of Workforce Development (DWD), then responsible for AFDC collections, complied with ACF's guidance for subsequent years, paying the federal government for its share of recoveries, while disputing repayment of FFY 01 and prior periods.

In December 2007, the DHHS Department Appeals Board issued a decision on Wisconsin's appeal, dismissing as "mere dicta" its prior concession that states could offset AFDC collection costs. After review by DOA, it has been determined that DCF should attempt to reach a resolution with ACF because, the merits of Wisconsin's arguments notwithstanding, litigation would consume additional time and resources, as well as risk additional interest costs that could be imposed by DCF.

The sum-sufficient GPR appropriation with a \$0 chapter 20 estimate is proposed for several reasons:

- First, DHHS/ACF has stated that repayment must be from state/non-federal fund sources. Use of base state fund sources is not an option because those funds are needed as match or "Maintenance-of-Effort" funds to draw current-year federal grant awards.
- Second, while DCF may attempt to see if a reduction in federal funds could be used for all or part of the agreement, or might be the implication if ACF were to take unilateral action, all base funding is needed to maintain currently authorized program levels for such critical programs as Wisconsin Shares child care subsidies, Wisconsin Works (W-2), the SSI Caretaker Supplement, and Kinship Care. Repayment from an additional appropriation will ensure that these critical programs for children and families are not negatively affected.
- Third, the last unrestricted federal reimbursement for the AFDC program was previously deposited in the general fund.
- Fourth, being able to apprise DHHS/ACF that an appropriation has been requested but must await legislative action may show "good faith" in terms of reaching a settlement.
- Last, the timing and amount of the final settlement payment cannot be precisely predicted because it depends on negotiation with DHHS/ACF, as well as the timing of legislative enactment, whether or not DHHS/ACF agrees to waive interest, and the amount if not. Reflecting \$0 in the schedule but defining the appropriation as limited to this purpose will position the state to resolve this issue without unnecessarily affecting the general fund.

**Desired Effective Date:** Upon Passage of the Bill



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0237/7

PJK: A:....

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

Agency Budget Draft

(29-16)

do not  
you cut

1 AN ACT ~~relating to~~; relating to: liability for overpayments and making an appropriation.

*Analysis by the Legislative Reference Bureau*

✓ HEALTH AND HUMAN SERVICES

\*

PUBLIC ASSISTANCE ✓

for paying

This bill creates a general purpose revenue appropriation to pay the federal government any remaining liability of the state to turn over to the federal government overpayments under the Aid to Families with Dependent Children Program (AFDC) that were collected by DWD after the commencement of the federal Temporary Assistance to Needy Families Program (TANF), which replaced AFDC.

For further information see the ~~state~~ fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 2 SECTION 1. 20.437 (2) (cr) <sup>x</sup> of the statutes is created to read:
- 3 20.437 (2) (cr) *Liability for overpayments collected under the Aid to Families*
- 4 *with Dependent Children Program.* ✓ A sum sufficient to pay any remaining liability
- 5 to the federal government related to overpayments made under the program under

1 s. 49.19<sup>✓</sup> that were collected by the department of workforce development after the  
2 commencement of the federal<sup>✓</sup> Temporary Assistance for Needy Families Program  
3 under 42 USC 601 to 619. The amount of any remaining liability shall be determined  
4 by the<sup>✓</sup> secretary of children and families in consultation with the federal secretary  
5 of health and human services.<sup>✓</sup>

\*\*\*\*NOTE: <sup>✓</sup>This SECTION involves a change in an appropriation that must be  
reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 2.** 20.437 (2) (cr)<sup>x</sup> of the statutes, as created by 2009 Wisconsin Act ....  
7 (this act), is repealed.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation, but should not be  
reflected in the revised schedule in s. 20.005, stats., because of a delayed effective date.

8 **SECTION 9408.**<sup>✓</sup> **Effective dates; Children and Families.**

9 (1) OVERPAYMENTS UNDER AFDC.<sup>✓</sup> The repeal of section 20.437 (2) (cr)<sup>✓</sup> of the  
10 statutes takes effect on June 30, 2011.<sup>✓</sup>

11 (END)

*D-106*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-02377/dn

PJK:.....

date

PI  
Jld

✓ overpayments

Were any of these ~~funds~~ collected, or are any of these ~~funds~~ still being collected, by the Department of Children and Families? ✓

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

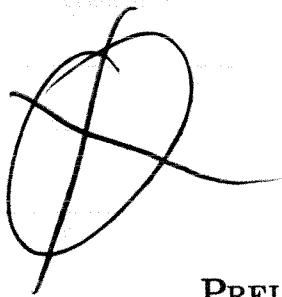
**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0237/P1dn  
PJK:jld:md

September 17, 2008

Were any of these overpayments collected, or are any of these overpayments still being collected, by the Department of Children and Families?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)



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1 **AN ACT ...; relating to:** liability for overpayments and making an appropriation.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**PUBLIC ASSISTANCE**

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11 (END)